रजिस्ट्री सं० डी० एल०–33004/97 REGISTERED No. DL-33004/97

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 1
PART II—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 58] नई दिल्ली, शुक्रवार, अक्टूबर 3, 1997 / आश्विनी 11, 1919
No. 58] NEW DELHI, FRIDAY, OCTOBER 3, 1997 / Asvina 11, 1919

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 3rd October, 1997/Asvina 11, 1919 (Saka)

THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) ORDINANCE, 1997

No. 21 OF 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance to make certain special provisions by way of amendments to the Essential Commodities Act, 1955, for a temporary period for dealing more effectively with persons indulging in hoarding and blackmarketing of, and profiteering in, essential commodities and for matters connected therewith or incidental thereto.

WHEREAS for ensuring the availability of essential commodities at fair prices, it is necessary to crub the hoarding and backmarketing of, and profiteering in, such commodities;

AND WHEREAS for dealing more effcively with persons indulging in such anti-social activities, it is necessary to make certain special provisions by way of amendments to the Essential Commodities Act, 1955, for a temporary period; 10 of 1955.

AND WHEREAS a Bill further to amend the Essential Commodities (Special Provisions) Act, 1981 and to make special provisions by way of amendment to the Essential Commodities Act, 1955 to achieve the above objects was introduced in Parliament but has not yet been passed; 18 of 1981. 10 of 1955.

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (*1*) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

1. *(1)* This Ordinance may be called the Essential Commodities (Special Provisions) Ordinance, 1997.

(2) It shall come into force at once except in the States of Arunachal Pradesh, Mizoram and the Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep; and in these States and Union territories on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and Union territories, and any reference to the commencement of this Ordinance or any provision thereof shall be construed in relation to each State and Union territory, as a reference, to the coming into force of this Ordinance in that State or Union territory.

Act 10 of 1955 to have effect subject to certain special provisions for a temporary period.

2. During the period of operation of this Ordinance, the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) shall have effect subject to the admendments specified in sections 3 to 11:

Provided that the amendments specified in sections 5 to 10 shall not apply to, or in relation to, any offence under the principal Act committed before the commencement of this Ordinance and the provisions of the principal Act shall apply to, and in relation to, such offences as if those amendments had not been made.

Amendment of section 2.

3. In section 2 of the principal Act,—

(a) clause *(ia)* shall be re-numbered as clause *(iia)*, and before clause *(iia)* as so re-numbered, the following clause shall be inserted, namely:—

'*(ia)* "Code" means the Code of Criminal Procedure, 1973;'; and 2 of 1974.

(b) after clause *(e)*, the following clause shall be inserted, namely:-

"*(f)* words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in that Code.".

Amendment of section 6A.

4. In section 6A of the principal Act, for the proviso to sub-section *(2)*, the following proviso shall be substituted, namely:—

"Provided that in the case of any such essential commodity the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other law for the time being in force, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price so fixed.".

Amendment of section 7.

5. In section 7 of the principal Act,—

(a) in sub-section *(1)*, the proviso to sub-clause *(ii)* of clause *(a)* shall be omitted;

(b) the proviso to sub-section *(2)* shall be omitted;

(c) the proviso to sub-section *(2A)* shall be omitted;

(d) sub-section *(2B)* shall be omitted.

Amendment of section 8.

6. To section 8 of the principal Act, the following proviso shall be added, namely:—

"Provided that where a person has abetted the contravention of any order for the purpose of procuring any essential commodity of the nature mentioned in sub-clause (*iva*) or sub-clause (*v*) of clause (*a*) of section 2 for his own use or for the use of any member of his family or for the use of any person dependent on him, and not for the purpose of carrying on any business or trade in such essential commodity, the court may, notwithstanding anything contained in section 7 and for reasons to be mentioned in the judgment, impose a sentence of fine only.".

Amendment of section 10A.

7. For section 10A of the principal Act, the following section shall be substituted, namely:—

Provision as to cognizance and bail.

2 of 1974.

"10A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under—

(*a*) this Act shall be cognizable;

(*b*) this Act except the offence punishable under sub-clause (*i*) of clause (*a*) of sub-section (*1*) of section 7 shall be non-bailable;

(*c*) sub-clause (*i*) of clause (*a*) of sub-section (*1*) of section 7, if committed more than once shall be non-bailable.".

Insertion of new section 10AA.

8. After section 10A of the principal Act, the following section shall be inserted, namely:—

Power to arrest

"10AA. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no officer below the rank of an officer-in-charge of a police station or any police officer authorised by him in this behalf in writing, shall arrest any person accused of committing an offence punishable under this Act.".

2 of 1974.

Omission of section 12.

9. Section 12 of the principal Act shall be omitted.

Substitution of new section for section 12A.

10. For section 12A of the principal Act, the following sections shall be substituted, namely:—

Constitution of Special Court.

'12A. (*1*) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(*2*) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.—In this sub-section, the word "appoint" shall have the meaning given to it in the *Explanation* to section 9 of the Code.

(*3*) A person shall not be qualified for appointment as a judge of a Special Court unless—

(*a*) he is qualified for appointment as a judge of High Court, or

(*b*) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

Offences triable by Special Courts.

12AA. (*1*) Notwithstanding anything contained in the Code,—

(*a*) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(*b*) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (*2*) or sub-section (*2A*) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers—

(*i*) when such person is fowarded to him as aforesaid; or

(*ii*) upon or at any time before the expiry of the period of detention authorised by him;

that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(*c*) the Special Court may, subject to the provisions of clause (*d*) of this sub-section, exercise, in relation to the preson forwarded to it under clause (*b*), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;

(*d*) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a special Court or the High Court;

(*e*) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act take cognizance of that offence without the accused being committed to it for trial;

(*f*) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial :

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial ;

Provided that such other offence is, under any other law for the time being in force, triable in a summary way :

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(*3*) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code and the High Court may

exercise such powers including the power under clause (*b*) of sub-section (*1*) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 12A.

Appeal and revision.

12AB. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before a Special Court.

12AC. Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.'.

Insertion of new section 15AA.

11. After section 51A of the principal Act, the following section shall be inserted namely:—

Transfer of cases

"15AA. Notwithstanding anything contained in any other law, any prosecution in respect of any offence under the principal Act, committed during the period commencing on the 1st day of September, 1997, and ending with the date of commencement of this Ordinance, shall be instituted only in the Special Court and any prosecution in respect of such offence pending in any court shall stand transferred to the Special Court.".

K.R. NARAYANAN,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI — 1997